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City of Oakland, et al.

7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 EDDIE MOSES, III,

11 Plaintiff,

12 vs.

13 CITY OF OAKLAND, a municipal corporation;
14 J. HEGE, individually, and in his capacity as a
police officer for the CITY OF OAKLAND;
15 (FNU) MORENO, individually, and in his
capacity as a police officer for the CITY OF
16 OAKLAND; and, Oakland police officers DOES
1-25, inclusive,

17 Defendants.

18 Case No. C-06-04468-SI

19 **STIPULATED PROTECTIVE ORDER**

20 Plaintiff EDDIE MOSES, III ("Plaintiff", individually and by and through the
21 LAW OFFICES OF JOHN L. BURRIS and DEFENDANTS CITY OF OAKLAND, JOHN
22 HEGE and JASON SENA ("Defendants"), by and through their attorney, the OFFICE OF
23 THE CITY ATTORNEY OF OAKLAND, hereby stipulate to the following protective order:

24 1. DEFINITIONS

25 1.1 Party: any party to this action, including all of its officers, directors,
employees, consultants, retained experts, and outside counsel (and their support staff).

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1 1.2 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner generated, stored, or maintained (including, among other things;

3 1.3 "Confidential" Information or Items: information (regardless of how
4 generated, stored or maintained) or tangible things qualify for protection under standards
5 developed under F.R.Civ. P. 26(c). This material includes, but is not limited to:

6 (a) Copies of certain personnel files for JOHN HEGE and JASON
7 SENA for a period covering the dates of their employment with the Oakland Police
8 Department through and including December 31, 2005.

9 (b) Copies of certain Internal Affairs files pertaining to complaints
10 regarding performance of duty, excessive force or false arrest for JOHN HEGE and
11 JASON SENA for a period January 1, 2000 through December 31, 2005.

12 (c) Any Internal Affairs files pertaining to the incident which is
13 alleged in the complaint on file in this action.

14 1.4 "Highly Confidential-Attorneys' Eyes Only" Information or Items:
15 extremely sensitive "Confidential Information or Items" whose disclosure to another Party
16 or non-party would create a substantial risk of serious injury that could not be avoided by
17 less restrictive means.

18 1.5 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 1.6 Producing Party: a Party or non-party that produces Disclosure or
21 Discovery Material in this action.

22 1.7 Designating Party: a Party or non-party that designates information
23 or items that it produces in disclosures or in responses to discovery as "Confidential" or
24 "Highly Confidential-Attorneys Eyes Only."

25 1.8 Protected Material: any Disclosure or Discovery Material that is
26 designated as "Confidential" or as "Highly Confidential-Attorneys' Eyes Only."

1 1.9 Outside Counsel: attorneys who are not employees of a Party but
2 who are retained to represent or advise a Party in this action.

3 1.10 House Counsel: attorneys who are employees of a Party.

4 1.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
5 well as their support staffs).

6 1.12 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
8 as an expert witness or as an consultant in this action and who is not a past or a current
9 employee of a Party and who, at the time of retention, is not anticipated to become an
10 employee of a Party. This definition includes a professional jury or trial consultant
11 retained in connection with this litigation.

12 1.13 Professional Vendors: person or entities that provide litigation
13 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
14 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
15 employees and subcontractors.

16 2. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also any information copied or extracted
19 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
20 testimony, conversations, or presentations by parties or counsel to or in court or in other
21 settings that might reveal Protected Material.

22 3. DURATION

23 Even after the termination of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
25 writing or court order otherwise directs.

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1 4. DESIGNATING PROTECTED MATERIAL

2 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be
3 properly qualified for protection under F.R.Civ.P. 26(c). Counsel shall not designate any
4 discovery material "CONFIDENTIAL" without first making a good faith determination that
5 protection is warranted.

6 4.2. Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise
8 stipulated or ordered, material that qualified for protection under the Order must be clearly
9 so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (apart from transcripts of
12 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" at the top of
14 each page that contains protected material.

15 A Party or non-party that makes original documents or materials available for
16 inspection need not designate them for protection until after the inspecting Party has
17 indicated which material it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be deemed
19 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." After the inspecting Party has
20 identified the documents it wants copied and produced, the Producing Party must
21 determine which documents, or portions thereof, qualify for protection under this Order,
22 then, before producing the specified documents, the Producing Party must affix the
23 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
24 ONLY") at the top of each page that contains Protected Material. If only a portion or
25 portions of the material on a page qualifies for protection, the Producing Party also must
26 clearly identify the protected portion(s) (e.g., by making appropriate markings in the

1 margins) and must specify, for each portion, the level of protection being asserted (either
2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
5 the record, before the close of the deposition, hearing, or other proceeding, all protected
6 testimony, and further specify any portions of the testimony that qualify as "HIGHLY
7 CONFIDENTIAL—ATTORNEYS' ONLY." When it is impractical to identify separately each
8 portion of testimony that is entitled to protection, the Party or non-party that sponsors,
9 offers, or gives the testimony may invoke on the record (before the deposition or
10 proceeding is concluded) a right to have up to 20 days to identify the specify the level of
11 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—
12 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately
13 designated for protection within the 20 days shall be covered by the provisions of this
14 Stipulated Protective Order.

15 Transcript pages containing Protected Material must be separately bound by
16 the court reporter, who must affix to the top of each such page the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," as
18 instructed by the Party or non-party offering or sponsoring the witness or presenting the
19 testimony.

20 (c) for information produced in some form other than
21 documentary, and for any other tangible items, that the Producing Party affix in a
22 prominent place on the exterior of the container or containers in which the information or
23 item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS'
24 EYES ONLY."

25 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items as "Confidential" or "Highly

1 Confidential—Attorneys’ Eyes Only” does not, standing alone, waive the Designating
2 Party’s right to secure protection under this Order for such material. If material is
3 appropriately designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only”
4 after the material was initially produced, the Receiving Party, on timely notification of the
5 designation, must make reasonable efforts to assure that the material is treated in
6 accordance with the provisions of the Order.

7 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 5.1 Timing of Challenges. Unless a proper challenge to a Designating
9 Party’s confidentially designation is necessary to avoid foreseeable substantial unfairness,
10 unnecessary economic burden, or a later significant disruption or delay of the litigation, a
11 Party does not waive its right to challenge a confidentiality designation by electing not to
12 mount a challenge promptly after the original designation is disclosed.

13 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
14 Designating Party’s confidentiality designation must do so in good faith and must begin
15 the process by conferring directly (in voice to voice dialogue; other forms of
16 communication are not sufficient) with counsel for the Designating Party. In conferring,
17 the challenging Party must explain the basis for its belief that the confidentiality
18 designation was not proper and must give the Designating Party an opportunity to review
19 the designated material, to reconsider the circumstances, and, if no change in designation
20 is offered, to explain the basis for the chose designation. A challenging Party may
21 proceed to the next stage of the challenge process only if it has engaged in this meet and
22 confer process first.

23 5.3 Judicial Intervention. A Party that elects to press a challenge to a
24 confidentiality designation after considering the justification offered by the Designating
25 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
26 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the

1 basis for the challenge. Each such motion must be accompanied by a competent
 2 declaration that affirms that the movant has complied with the meet and confer
 3 requirements imposed in the preceding paragraph and that sets forth with specificity the
 4 justification for the confidentiality designation that was given by the Designating Party in
 5 the meet and confer dialogue.

6 The burden of persuasion in any such challenge proceeding shall be on the
 7 Designating Party. Until the court rules on the challenge, all parties shall continue to
 8 afford the material in question the level of protection to which it is entitled under the
 9 Producing Party's designation.

10 6. ACCESS TO AND USE OF PROTECTED MATERIAL

11 6.1 Basic Principles. A Receiving Party may use Protected Material that
 12 is disclosed or produced by another Party or by a non-party in connection with this case
 13 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 14 material may be disclosed only to the categories of persons and under the conditions
 15 described in this Order. When the litigation has terminated, a Receiving Party must
 16 comply with the provisions of section 10, below (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
 18 location and in a secure manner that ensures that access is limited to the persons
 19 authorized under this Order.

20 6.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless
 21 otherwise ordered by the court or permitted in writing by the Designating Party, a
 22 Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

23 (a) employees of the Receiving Party to whom disclosure is
 24 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound
 25 by Protective Order" (Exhibit A);

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1 (b) experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this litigation and who have signed the
3 "Agreement to Be Bound by Protective Order" (Exhibit A);
4 (c) the Court and its personnel;
5 (d) court reporters, their staffs, and professional vendors to whom
6 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
7 to Be Bound by Protective Order" (Exhibit A);
8 (e) during their deposition, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
0 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
1 depositions that reveal Protected Material must be separately bound by the court reporter
2 and may not be disclosed to anyone except as permitted under this Stipulated Protective
3 Order.
4 (f) the author the document or the original source of the
5 information.

6.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES"

17 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
18 writing by the Designating Party, Receiving Party may disclose any information or item
19 designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

20 (a) Experts (as defined in this Order) (1) to whom disclosure is
21 reasonably necessary for this litigation, who have signed the "Agreement to Be Bound by
22 Protective Order" (Exhibit A);
23 (b) the Court and its personnel;
24 (c) court reporters, their staffs, and professional vendors to whom
25 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
26 to Be Bound by Protective Order" (Exhibit A); and

1 (d) the author of the document or the original source of the
2 information.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

5 If a Receiving Party is served with a subpoena or an order issued in other
6 litigation that would compel disclosure of any information or items designated in this action
7 as "CONFIDENTIAL" or HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the
8 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
9 immediately and in no event more than three court days after receiving the subpoena or
10 order. Such notification must include a copy of the subpoena or court order.

11 The Receiving Party also must immediately inform in writing the Party who
12 caused the subpoena or order to issue in the other litigation that some or all the material
13 covered by the subpoena or order is the subject of this Protective Order. In addition, the
14 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
15 Party in the other action that caused the subpoena or order to issue.

16 The purpose of imposing these duties is to alert the interested parties to the
17 existence of this Protective Order and to afford the Designation Party in this case an
18 opportunity to try to protect its confidentiality interests in the court from which the
19 subpoena or order issued. The Designating Party shall bear the burdens and the
20 expenses of seeking protection in that court of its confidential material—and nothing in
21 these provisions should be construed as authorizing or encouraging a Receiving Party in
22 this action to disobey a lawful directive from another court.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has
25 disclosed Protected Material to any person or in any circumstance not authorized under

1 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
 2 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
 3 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
 4 disclosures were made of all of the terms of this Order, and (d) request such person or
 5 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
 6 hereto as Exhibit A.

7 9. FILING PROTECTED MATERIAL. Without written permission from
 8 the Designating Party or a court order secured after appropriate notice to all interested
 9 persons, a Party may not in the public record in this action any Protected material. A
 10 Party that seeks to file under seal any Protected Material must comply with Civil Local
 11 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions
 12 that the envelope is not to be opened absent further order of the court, the envelope
 13 should be labeled to identify title of the case, the case number, and the title of the
 14 document.

15 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing
 16 by the Producing Party, within sixty days after the final termination of this action, each
 17 Receiving Party must return all Protected Material to the Producing Party, as used in this
 18 subdivision, "all Protected Material" includes all copies, abstracts compilations, summaries
 19 or any other form of reproducing or capturing any of the Protected Material. With
 20 permission in writing from the Designating Party, the Receiving Party may destroy some or
 21 all of the Protected Material instead of returning it. Whether the Protected Material is
 22 returned or destroyed, the Receiving Party must submit a written certification to the
 23 Producing Party (and, if not the same person or entity, to the Designating Party) by the
 24 sixty day deadline that identifies (by category, where appropriate) all the Protected
 25 Material that was returned or destroyed and that affirms that the Receiving Party has not
 26 retained any copies, abstracts, compilations, summaries or other forms of reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
2 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
3 memoranda, correspondence or attorney work product, even if such materials contain
4 Protected Material. Any such archival copies that contain or constitute Protected Material
5 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

6 **11. MISCELLANEOUS**

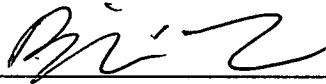
7 **Right to Further Relief.** Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 **12. JURISDICTION.** The Court shall retain jurisdiction over any matter
10 covered by this Stipulation and Order for 24 months after the final termination of this
11 action.

12 **THE PARTIES HEREBY STIPULATE TO THE TERMS OF THE
13 PROTECTIVE ORDER AS SET FORTH ABOVE.**

14
15 DATED: February 14, 2007

LAW OFFICES OF JOHN L. BURRIS

16 By: 
17 BENJAMIN NISENBAUM, ESQ.
18 Attorneys for Plaintiff
19 Eddie Moses, III

20
21 DATED: February 20, 2007

22 OFFICE OF THE CITY ATTORNEY
23 By: 
24 ARLENE M. ROSEN
25 Senior Deputy City Attorney
26 Attorneys for Defendants
City of Oakland, et al.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3 DATED: _____

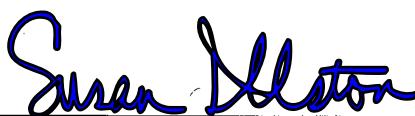
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6 SUSAN ILLSTON
7 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States Court for the Northern District of California on _____ [date] in the case of Eddie Moses, III, v. City of Oakland, et al. Case No. C-06-04468-SI. I agree to comply with and be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____
4 [printed name]

5
6 Signature: _____
7 [signature]

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